

SITE DEVELOPMENT PERMIT

FILE NO.	H18-029
LOCATION OF PROPERTY	Southside of Fontanoso Road approximately 250 feet easterly of Hellyer Avenue (459 Piercy Road).
ZONING DISTRICT	CIC Combined Industrial/Commercial Zoning District
GENERAL PLAN DESIGNATION	Industrial Park
PROPOSED USE	Site Development Permit to allow the construction of a five-story, 112 room, approximately 81,000-square foot hotel on an approximately 2.02-gross acre site.
ENVIRONMENTAL STATUS	Mitigated Negative Declaration for 459 and 469 Piercy Road Hotel Projects
OWNER ADDRESS	LIP2, LLC 4947 Shiloh Place San Jose, CA 95138
APPLICANT ADDRESS	Sunny Bhanot 18181 Butterfly Boulevard, Unit 125 Morgan Hill, CA 95037

The Director of Planning, Building, and Code Enforcement determines, concludes, and finds as facts and findings for this proposed project:

1. **Site Description and Surrounding Uses.** The subject site is located on the southside of Fontanoso Road approximately 250 feet easterly of Hellyer Avenue. The parcel is currently vacant. Northeast of the parcel is vacant land and southeast of the project site contains a single-family residence with a detached garage. Southwest is an industrial warehouse and a single-family residence and northwest is an office complex.
2. **Project Description.** This is a Site Development Permit to allow the construction of a five-story, 112 room, approximately 81,000-square foot hotel on an approximately 2.02-gross acre site.

3. **General Plan Land Use Designation.** The subject site has an Envision San José 2040 General Plan Land Use/Transportation Diagram land use designation of Industrial Park. This designation is intended for a wide variety of industrial users such as research and development, manufacturing, assembly, testing and offices. Additional flexibility may be provided for retail and service commercial uses, including hotels within the Edenvale Development Policy area.
4. **Edenvale Area Development Policy Conformance (EADP).** Development within the Edenvale Area is subject to the EADP, updated and adopted by City Council on November 18, 2014 by Resolution No. 77220, for the allocation of appropriate transportation infrastructure improvements. Adoption of the EADP allows for the following:
- a. Manage the traffic congestion associated with near term development in the Edenvale Policy Area (Edenvale Area);
 - b. Promote General Plan goals for economic development, particularly high technology driven industries;
 - c. Encourage a citywide reverse commute to jobs at southerly locations in San José: and;
 - d. Provide for transit-oriented, mixed-use residential and commercial development to increase internalization of automobile trips and promote transit ridership. The EADP accomplishes these goals by allowing certain industrial, office, and commercial developments to proceed prior to the construction of traffic mitigation measures required to address identified intersection Level of Service impacts.
5. **Zoning Ordinance.** The subject site is located in the CIC Combined Industrial/Commercial Zoning District. This district provides for commercial or industrial uses, or a compatible mixture of these uses. The project is subject to the following regulations of the Zoning Ordinance:

a. **Setbacks:**

i. Front Setbacks:

Front Setback	Requirement in feet	Provided
Building & Structures	15 feet	18 feet
Parking and circulation for passenger vehicles	20 feet	25 feet
Parking for trucks	40 feet	Not applicable
Loading docks	60 from property line	At least 100 feet

ii. Side and Rear Setbacks: Zero feet. The proposed project has a greater than zero side and rear setback.

- b. **Heights:** Pursuant to Section 20.85.020, the site is located within the Geographic Area Specific Height Restrictions known as New Edenvale and therefore has a maximum height of 120 feet. The maximum height proposed is approximately 57 feet.

- c. **Parking:** The proposed project is as outlined in the Municipal Code is required to provide vehicle parking at the following ratios:

Use	Vehicle Parking	Bicycle Parking	Motorcycle Parking
Hotel	One vehicle space per room plus one vehicle space per employee	One bicycle space plus one per 10 rooms	One motorcycle space per 20 spaces
Restaurant with an associated bar	One vehicle space per 2.5 seats	One bicycle space per 50 seats	One motorcycle space per 20 spaces

- i. The proposed project requires 119 vehicle parking spaces, 14 bicycle parking spaces, and 6 motorcycle spaces. The proposed project provides 125 vehicle parking spaces, 14 bicycle parking spaces, and 6 motorcycle parking spaces.
6. **Environmental Review.** An Initial Study (IS) and Mitigated Negative Declaration (MND) entitled “459 and 469 Piercy Road Hotel Projects” was prepared by the Director of Planning, Building, and Code Enforcement for the subject Rezoning and the two Site Development Permit Applications. The IS/MND was completed in compliance with the California Environmental Quality Act (CEQA) to reflect an independent judgment and analysis of the project.
- The IS/MND identified potentially significant environmental impacts and determined that the proposed project would not have a significant effect on the environment with the incorporation of certain mitigation measures. The primary environmental issues addressed in the IS/MND were the potential impacts to biological resources, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, and noise and vibration from the project. The MND includes mitigation measures for the previously stated resource areas that would reduce any potentially significant project impacts to a less-than-significant level. The mitigation measures are included in the Mitigation Monitoring and Reporting Program (MMRP) and in the associated permit as a part of the project.
7. **Site Development Permit Findings.** Chapter 20.100 of Title 20 of the San José Municipal Code establishes required findings for issuance of a Site Development Permit, which findings are made for the Project based on the above-state findings related to General Plan, Zoning and CEQA conformance and for the reasons state below, and subject to the conditions set forth in this permit.
- a. The Site Development Permit, as approved, is consistent with and will further the policies of the General Plan and applicable Specific Plans and area development policies; and
- i. Major Strategy #4 – Innovation/Regional Employment Center: Emphasize economic development within the City to support San José’s growth as center of innovation and regional employment.
- ii. Land Use Policy LU-8.1: In areas that are designated for mixed industrial and commercial uses, allow only commercial uses that are compatible with industrial uses. Non-employment uses are prohibited in these areas.

Analysis: The subject site is located within the Edenvale growth area which is identified as a regional employment center. The recent council adopted text amendment (File No. GPT18-003) above allowed flexibility for service commercial uses to support existing and future employers and their employees. This hotel would allow commercial uses at the subject site that would serve the surrounding Industrial Park businesses within the EADP area.

- b. The Site Development Permit, as approved, conforms with the Zoning Code and all other provisions of the San José Municipal Code applicable to the project; and

Analysis: As described above, the building has a building height of approximately 57 feet which is within the maximum requirement of 120 feet. The proposed project requires 119 vehicle parking spaces, 14 bicycle parking spaces, and 6 motorcycle spaces. The project provides 125 vehicle parking spaces, 14 bicycle parking spaces, and 6 motorcycle parking spaces. Therefore, the project is consistent with the applicable Municipal Code requirements.

- c. The Site Development Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; and

Analysis: As detailed above, the project site is located within the Edenvale Area Development Policy (EDAP) and is subject to the Traffic Impact Fee (TIF) associated with the base maximum floor area ratio as a condition of approval with this permit. The proposed project is consistent with the EADP by allowing the compatible hotel use to develop.

- d. The interrelationship between the orientation, location, and elevations of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.

Analysis: The project provides access from Hellyer Avenue. The parking is primarily situated within the sides and rear of the site along the circulation route which loops around the perimeter, including pedestrian access. The hotel building would be the only building on site and does feature an outdoor pool area located closer to the rear of the site, which orients the pool area away from the street. The building design varies in heights and color throughout the façade which are aesthetically harmonious.

- e. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.

Analysis: The frontage along Hellyer Avenue accommodates for 25 feet of landscaping, which is consistent with the nearby existing development. The hotel use is similar in massing and height to the adjacent commercial complex and is therefore compatible with the character of the area.

- f. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

Analysis: As detailed above, an IS/MND was prepared to reflect an independent judgment and analysis of the project. The temporary construction of the proposed project will not have an unacceptable negative effect on adjacent property or properties because of City limitations on construction hours and the required mitigation measures and permit conditions. The proposed project has been evaluated to be in compliance with the City's stormwater requirements and provides on-site bio-treatment.

- g. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.

Analysis: The proposed project includes 25 feet of landscaping to beautify the public right-of-way with adequate pedestrian and vehicle access, with integrated trash facilities.

- h. Traffic access, pedestrian access and parking are adequate.

Analysis: The proposed project contains parking consistent with the Zoning Ordinance, adequate pedestrian, bicycle, and vehicular access into the site. Pedestrians can easily access the building from the front lobby and paths of pedestrian travel have been provided from the vehicle parking spaces to the back of the building. The project was reviewed in combination by the Department of Public Works, the Department of Transportation and Fire Department and was found to be consistent with the City policies.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and
 - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire two years from and after the date of issuance hereof by said Director, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions.

4. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
5. **Conformance with Plans.** The development of the site shall conform to the approved Special Use Permit plans entitled, “Residence Inn” dated December 03, 2019 on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
6. **Use Authorization.** This Site Development Permit to allow the construction of a five-story, 112 room, approximately 81,000-square foot hotel on an approximately 2.02-gross acre site.
7. **Green Building Requirements.** This development is subject to the City’s Green Building Ordinance for Private Sector New Construction as set for in Municipal Code Section 17.84. Prior to the issuance of any shell permits, or complete building permits, for the construction of buildings approved through the scope of this Permit, the Permittee shall pay a Green Building Refundable Deposit. In order to receive a refund of the deposit, the project must achieve the minimum requirements as set forth in Municipal Code Section 17.84. The request for the refund of the Green Building Deposit together with evidence demonstrating the achievement of the green building standards indicated in Municipal Code Section 17.84 shall be submitted within a year after the building permit expires or becomes final, unless a request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305D of the Municipal Code.
8. **Affordable Housing Financing Plans.** The San José City Council (“City”) approved the Envision San Jose General Plan 2040 (“General Plan”) in 2011. The General Plan provides the framework for development located in San Jose.

The City is in the process of developing financing plans to help fund affordable housing and related amenities and services. The financing plans may include the creation of a (i) Community Facilities District(s); (ii) Enhanced Infrastructure Financing District(s); (iii) Property Based Improvement District(s); (iv) Mitigation Impact Fee program(s); (v) Commercial linkage fee program(s); and/or (vi) other financing mechanisms or combination thereof. For example, the City Council has directed City staff to complete studies and make recommendations related to commercial impact fees to help fund affordable housing. These efforts are on-going and there will continue to be other similar efforts to study various funding mechanisms for affordable housing.

By accepting this Permit including the conditions of approval set forth in this Permit, permittee acknowledges it has read and understands all of the above. Permittee further agrees that prior to the issuance of any building permit, the project shall be subject to, fully participate in, and pay any and all charges, fees, assessments, or taxes included in any City Council approved financing plans related to affordable housing, as may be amended, which may include one or more of the financing mechanisms identified above.

9. **Window Glazing.** Unless otherwise indicated on the Approved Plan, all windows shall consist of a transparent glass.
10. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set.
11. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San Jose Municipal Code.
12. **Compliance with All Laws.** The subject use shall be conducted in full compliance with all local and state laws, regulations and required permits. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
13. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
14. **Outdoor Storage.** No outdoor storage shall be allowed or permitted.
15. **Utilities.** All new on-site telephone, electrical, and other service facilities shall be placed underground.
16. **Anti-Graffiti.** The permittee shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.
17. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris.
18. **Refuse.** All trash areas shall be effectively screened from view, shall be covered or shall consist of self-contained weather tight compactor(s), and shall be maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.
19. **Lighting.** All new on-site, exterior, unroofed lighting shall conform to the City's Outdoor Lighting Policy and shall use fully cut-off and fully shielded, low-pressure sodium fixtures unless otherwise approved with this project. Lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property.
20. **No Sign Approval.** Any signage shown on the Approved Plan Set are conceptual only. No signs are approved at this time. Any signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
21. **Building and Property Maintenance.** The property owner shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, and lighting and landscaping.

22. **Required Vehicular, Motorcycle, and Bicycle Parking.** This project shall conform to the vehicular, motorcycle, and bicycle parking requirements of the Zoning Ordinance/approved Planned Development Zoning, as amended. Any changes to the required vehicular, motorcycle, or bicycle parking requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
23. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
24. **Mechanical Equipment.** The location and type of mechanical equipment shall be as shown on the Approved Plans and shall be screened from view. Changes to the mechanical equipment requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
25. **No Generators Approved.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
26. **Reclaimed Water.** The project shall conform to Chapter 15.10 and 15.11 of the San José Municipal Code for use of reclaimed water and shall include an irrigation system designed to allow for the current and future use of reclaimed water for all landscaping.
27. **No Extended Construction Hours.** This Permit does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
28. **Construction Disturbance Coordinator.** Rules and regulation pertaining to all construction activities and limitations identified in this Permit, along with the name and telephone number of a Permittee-appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.
29. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/index.aspx?nid=2246>.
- a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
 - b. **Transportation:**
 - i. A Traffic Operational Analysis has been performed for this project based on a net 56 AM and 103 PM peak hour trips. See separate Traffic Memo dated 6/15/18 for the combined traffic study of 459 & 469 Piercy Road project sites (Reference Planning Permit # H18-016) for additional information.
 - ii. In conformance with the Edenvale Area Development Policy (EADP), the project will be required to pay a traffic impact fee (\$2.024/square feet) for the area that exceeds the allowable industrial area for the subject site.

c. Grading/Geology:

- i. A grading permit is required prior to the issuance of a Public Works Clearance.
 - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 foot in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2013 California Plumbing Code or submit a stamped and signed alternate engineered design for Public Works discretionary approval and should be designed to convey a 10-year storm event.
 - iii. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
 - iv. Because this project involves a land disturbance of one or more acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
 - v. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The report should also include, but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.
- d. Stormwater Runoff Pollution Control Measures: This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
- i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.

- ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
- e. Stormwater Peak Flow Control Measures: The project is located in a Hydromodification Management (HM) area and will create and/or replace one acre or more of impervious surface. The project must comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14) which requires HM projects to demonstrate that post-project runoff does not exceed estimated pre-project runoff rates and durations.
 - i. The project's HM plan and sizing calculations have been reviewed and this project will be in conformance with City Policy 8-14.
 - ii. Final inspection and maintenance information for the HM controls must be included on the final HM plans.
- f. Flood: Zone D: The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.
- g. Sewage Fees: In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
- h. Municipal Water: In accordance with City Ordinance #23975, Major Water Facilities Fee is due and payable. Contact Amado Valdez at (408) 794-6769 for further information.
- i. Undergrounding: There are no existing overhead utilities along the project frontage or across the street from project frontage, therefore the in lieu undergrounding fee is not required.
- j. Assessments:
 - i. This project is located within the boundaries of Improvement District 99-218SJ (Hellyer-Piercy), which sold bonds to fund the construction of the street improvements in the surrounding industrial development and to provide access to this site. The bonds are secured by the properties and an assessment has been assigned to each parcel based on its current configuration and are collected through the County property tax bills. The General Plan designation for the land within the District is "Industrial Park" ("IP"). This designation is intended to integrate new development into the planned development pattern in order to permit a cohesive area character. New permitted uses include manufacturing, warehouse, research and development, and administrative/business offices. The outstanding principal balance for Assessor's Parcel No. 678-93-039 is \$123,726.75. An annual assessment, not to exceed \$36,688.96, will be placed on the County property tax bills listed under Tax Code 24Q "HELLYER-PIERCY BND" through fiscal year 2022-23. Any questions may be directed to Thomas Borden at (408) 535-6831

- ii. This project proposes a hotel use. The City of San José, on September 30, 2008 implemented a special tax for Convention Center Facilities District (CCFD) No. 2008-1 for all existing hotel properties with the intent that future hotel properties would participate as well. The special tax was authorized to be levied on hotel properties for the purpose of paying for the acquisition, construction, reconstruction, replacement, rehabilitation and upgrade of the San Jose Convention Center. The special tax is levied and collected in addition to and in a manner similar to the City's Transient Occupancy Tax. The base special tax is 4% of gross rents, and may be subject to an additional special tax up to 1% of gross rents. Please contact Thomas Borden at (408) 535-6831 to coordinate the annexation process.
- k. Street Improvements:
 - i. Construct 10' wide attached sidewalk with 4'x5' tree wells along Hellyer Avenue project frontage.
 - ii. Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
 - iii. Close unused driveway cut(s).
 - iv. Proposed driveways width to be 26' wide ingress and egress.
 - v. Developer shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage.
 - vi. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
- l. Electrical: Existing electric utilities along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
- m. Street Trees: The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in cut-outs at the back of curb. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.

30. Standard Environmental Conditions.

- a. Air Quality
 - i. The following measures shall be implemented during all phases of construction to control dust and exhaust at the project sites:
 - 1) All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded area, and unpaved access roads) shall be watered two times per day.
 - 2) All haul trucks transporting soil, sand, or other loose material off-site shall be covered.

- 3) All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- 4) All vehicle speeds on unpaved roads shall be limited to 15 mph.
- 5) All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- 6) Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- 7) All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- 8) Post a publicly visible sign with the telephone number and person to contact at the City of San José regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

All mobile diesel-powered off-road equipment larger than 25 horsepower and operating on-site for more than two days continuously (or 20 hours in total) shall meet U.S. EPA particulate matter emissions standards for Tier 2 engines equipped with CARB-certified Level 3 Diesel Particulate Filters or equivalent.

b. Biological Resources

In accordance with General Plan Policy MS-21.4, MS-21.6, MS 21.8 and the City's Tree Removal Ordinance, trees removed from 469 Piercy Road would be replaced at the ratios identified in Table 4.4-1 below.

Tree Replacement Ratios				
Circumference of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more	5:1	4:1	3:1	15-gallon
19 to 38 inches	3:1	2:1	None	15-gallon
Less than 19 inches	1:1	1:1	None	15-gallon

X:X = tree replacement to tree loss ratio

Notes: Trees greater than or equal to 38 inches in circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For multi-family residential, commercial, and industrial properties, a Tree Removal Permit is required for removal of trees of any size.

A 38-inch tree equals 12.1 inches in diameter.

One 24-inch box tree= two 15-gallon trees.

In the event the required replacement/mitigation trees cannot be accommodated on the 469 Piercy Road project site, one or more of the following measures will be implemented, to the satisfaction of the City's Environmental Supervising Planner, prior to issuance of the development permit:

- i. Identify an alternative site(s) for additional tree planting. Alternative sites may include local parks or schools or installation of trees on adjacent properties for screening purposes to the satisfaction of the Director of the Department of Planning, Building, and Code Enforcement. Contact the Department of Parks, Recreation & Neighborhood Services Landscape Maintenance Manager for specific park locations in need of trees.
- ii. A donation may also be made to Our City Forest or similar organization for in-lieu tree planting in the community. Such donation will be equal to the cost of the required replacement trees, including associated installation costs, for off-site tree planting in the local community. A receipt for any such donation will be provided to the City of San José Planning Project Manager prior to issuance of a development permit.

The projects are subject to applicable Habitat Plan conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permit. The project applicants shall submit a Santa Clara Valley Habitat Plan Coverage Screening Form to the Supervising Environmental Planner of the Department of Planning, Building, and Code Enforcement for review and will complete subsequent forms, reports, and/or studies as needed.

c. Cultural Resources

In the event that any prehistoric or historic resources are encountered during excavation and/or grading of the sites, all activity within a 50-foot radius of the find shall be stopped, the Supervising Environmental Planner and Historic Preservation Officer of the Department of Planning, Building and Code Enforcement shall be notified, and a qualified archaeologist will examine the find and make appropriate recommendations prior to the issuance of a building permit. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery during monitoring shall be submitted to the Supervising Environmental Planner and Historic Preservation Officer of the Department of Planning, Building and Code Enforcement prior to issuance of building permits.

If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement and the qualified archaeologist, who will then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American.

If the remains are believed to be Native American, the Coroner will contact the NAHC within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts.

If one of the following conditions occurs, the landowners or his authorized representatives shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

- i. The Native American Heritage Commission is unable to identify a most likely descendent or the most likely descendent failed to make a recommendation within 24 hours after being notified by the commission.
- ii. The descendant identified fails to make a recommendation; or
- iii. The landowner or his authorized representative rejects the recommendation of the descendant, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.

If vertebrate fossils are discovered during construction, the Director of Planning, Building, and Code Enforcement shall be notified and all work on the site will stop immediately until a qualified professional paleontologist can assess the nature and importance of the find and recommend appropriate treatment. Treatment may include preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The project proponent(s) will be responsible for implementing the recommendations of the paleontological monitor, and a final report documenting the implementation of the treatment program shall be provided prior to building permit or certificate of occupancy, depending upon when resources are encountered, to the Supervising Environmental Planner and Historic Preservation Officer of the Department of Planning, Building and Code Enforcement.

d. Geology and Soils

To avoid or minimize potential damage from seismic shaking, the proposed projects would be built using standard engineering and seismic safety design techniques. Building design and construction at the site will be completed in conformance with the recommendations of a design-level geotechnical investigation. The structural designs for the proposed developments will account for repeatable horizontal ground accelerations. The reports shall be reviewed and approved of by the City of San José's Building Division as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes, including the 2016 California Building Code Chapter 16, Section 1613, as adopted or updated by the City. The projects shall be designed to withstand soil hazards identified on the site and the projects shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.

The 459 and 469 Piercy Road projects shall be constructed in accordance with the standard engineering practices in the California Building Code, as adopted by the City of San José. In addition, the City of San José Department of Public Works requires a grading permit to be obtained prior to the issuance of a Public Works Clearance. These standard practices, including the measures outlined below, would ensure that future buildings on the site are designed properly to account for soils-related hazards on the site and to prevent soil erosion.

- i. The projects shall conform to the recommendations of a project-specific geotechnical report, including design considerations for proposed foundations.
 - ii. The projects shall prepare and implement an Erosion Control Plan in conformance with the requirements of the Department of Public Works.
 - iii. A Geotechnical Report shall be submitted, reviewed, and approved by the City Geologist. The Geotechnical Report shall determine the site-specific soil conditions and identify the appropriate design and construction techniques to minimize risks to peoples and structures, including but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with State of California guidelines for the preparation of seismic hazard evaluation reports (CGS Special Publication 117A, 2008, and the Southern California Earthquake Center report, SCEC, 1999). A recommended minimum depth of 50 feet should be explored and evaluated in the investigation.
 - iv. The City Geologist will review the Geotechnical Report and issue a Geologic Clearance.
- e. Greenhouse Gas
- The following project-specific measures, based on BAAQMD's recommendations, have been included for both the 459 and 469 Piercy Road hotels to reduce construction GHG emissions.
- i. Use local building materials of at least 10 percent, and recycle or reuse at least 50 percent of construction waste or demolition materials.
- f. Hydrology and Water Quality
- The following project-specific measures, based on RWQCB BMPs, have been included in both the 459 and 469 Piercy Road hotels, to reduce construction and development-related water quality impacts. BMPs would be implemented prior to and during earthmoving activities on-site and would continue until the construction is complete, and during the post-construction period, as appropriate.
- i. Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
 - ii. Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
 - iii. All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
 - iv. Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.

- v. All trucks hauling soil, sand, and other loose materials shall be required to cover all trucks or maintain at least two feet of freeboard.
 - vi. All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
 - vii. Vegetation in disturbed areas shall be replanted as quickly as possible.
 - viii. All unpaved entrances to the site shall be filled with rock to knock mud from truck tires prior to entering City streets. A tire wash system may also be employed at the request of the City.
 - ix. The project applicants shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.
 - x. A Storm Water Permit will be administered by the SWRCB. Prior to construction grading for the proposed land uses, the project proponents will file an NOI to comply with the General Permit and prepare a Storm Water Pollution Prevention Plan (SWPPP) which addresses measures that would be included in the projects to minimize and control construction and post-construction runoff. Measures will include, but are not limited to, the aforementioned RWQCB Best Management Practices.
 - xi. The SWPPP shall be posted at the project sites and will be updated to reflect current site conditions.
 - xii. When construction is complete, a Notice of Termination (NOT) for the General Permit for Construction shall be filed with the SWRCB. The NOT shall document that all elements of the SWPPP have been executed, construction materials and waste have been properly disposed of, and a post-construction stormwater management plan is in place as described in the SWPPP for the sites.
- g. Noise
- i. The applicants for the 459 and 469 Piercy Road projects shall develop a noise logistics plan to be implemented during all phases of construction to reduce noise exposure of neighboring properties. The noise logistics plans will include the following available controls:
 - ii. Construction activities shall be limited to the hours between 7:00 AM and 7:00 PM, Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence (Municipal Code Section 20.100.450).
 - iii. Utilize the best available noise suppression devices and techniques during construction activities.
 - iv. Construct temporary noise barriers, where feasible, to screen stationary noise-generating equipment. Temporary noise barrier fences would provide a 5 dBA noise reduction if the noise barrier interrupts the line-of-sight between the noise source and receiver and if the barrier is constructed in a manner that eliminates any cracks or gaps.

- v. Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
 - vi. Unnecessary idling of internal combustion engines should be strictly prohibited.
 - vii. Locate stationary noise-generating equipment, such as air compressors or portable power generators, as far as possible from sensitive receptors as feasible. If they must be located near receptors, adequate muffling (with enclosures where feasible and appropriate) shall be used reduce noise levels at the adjacent sensitive receptors. Any enclosure openings or venting shall face away from sensitive receptors.
 - viii. Utilize "quiet" air compressors and other stationary noise sources where technology exists.
 - ix. Construction staging areas shall be established at locations that will create the greatest distance between the construction-related noise sources and noise-sensitive receptors nearest the project site during all project construction.
 - x. A temporary noise control blanket barrier could be erected, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.
 - xi. Locate material stockpiles, as well as maintenance/equipment staging and parking areas, as far as feasible from residential receptors.
 - xii. Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.
 - xiii. Notify in writing all adjacent business, residences, and other noise-sensitive land uses of the construction schedule.
 - xiv. Designate a "disturbance coordinator" who would be responsible for responding to any complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., bad muffler, etc.) and will require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include in it the notice sent to neighbors regarding the construction schedule.
- h. Transportation

The projects, both 459 and 469 Piercy Road, shall conform to the EADP and pay the appropriate TIF based on the equivalent number of industrial trips produced according to the hotel rooms proposed for each site. The fee shall be paid prior to issuance of a Public Works clearance. This fee is subject to an annual escalation on January 1, per the Engineering News-Record Construction Cost Index for San Francisco.

31. Mitigation Measures.

- a. *Biological Resources:*
 - i. MM BIO-1: The project applicants shall schedule demolition and construction activities to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area extends from February 1st through August 31st (inclusive).

If demolition and construction activities cannot be scheduled between September 1st and January 31st (inclusive) to avoid the nesting season, pre-construction surveys for nesting raptors and other migratory nesting birds shall be conducted by a qualified ornithologist to identify active nests that may be disturbed during project implementation on-site and within 250 feet of the site. The pre-construction survey for nesting birds shall be conducted prior to initiation of construction, demolition activities, or tree removals no more than 14 days during the early part of the nesting season between February 1st and April 30th (inclusive) and no more than 30 days prior to initiation of these activities during the late part of the nesting season between May 1st and August 31st (inclusive).

If an active nest is found in or close enough to the project area to be disturbed by construction activities, a qualified ornithologist, in consultation with the California Department of Fish and Wildlife, shall determine the extent of a construction-free buffer zone (typically 250 feet for raptors and 100 feet for other birds) around the nest, to ensure that raptor or migratory bird nests would not be disturbed during ground disturbing activities. The construction-free buffer zones shall be maintained until after the nesting season has ended and/or the ornithologist has determined that the nest is no longer active.

The ornithologist shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Supervising Environmental Planner of the City of San José Department of Planning, Building and Code Enforcement prior to issuance of any grading, demolition, and/or building permit, and any tree removal, whichever occurs first in time.

b. Greenhouse Gas Emissions:

- i. MM GHG-1: Prior to issuance of any Public Works clearances, the project applicants for each hotel project shall implement separately for each hotel the following mitigation measures according to the hotel's date of occupancy.
- ii. Develop a GHG emissions reduction plan that would (1) reduce emissions from implementation of the hotel projects, and (2) demonstrate reduction of GHG emissions resulting from implementation of the 459 and 469 Piercy projects will be reduced by a sufficient amount for each site to achieve the 2020 standard of 1,100 MT of CO₂e/year, and the 2030 standard of 660 of CO₂e/ year, which is based on the year each hotel would become operational, i.e. begin emitting GHG emissions from occupancy.
 - 1) If both hotels are operational prior to January 1, 2021 they are subject to 2020 GHG reduction targets, and the projects would require GHG emission reductions of at least 458 MT of CO₂e/year for the 459 Piercy project, and at least 1,335 MT of CO₂e/year for the 469 Piercy project, such that each project would have GHG emissions not exceeding 1,100 MT of CO₂e/year.
 - 2) If both hotels are operational after December 31, 2020 they are subject to 2030 GHG reduction targets, the projects would require GHG emission reductions of at least 898 MT of CO₂e/ year for the 459 Piercy project and at least 1,775 MT of CO₂e/ year for the 469 Piercy project, such that each project would have GHG emissions not exceeding 660 MT of CO₂e/ year. Elements of this plan may include, but would not be limited to, the following:

- iii. Elements of this plan the GHG emissions reduction plan may include, but would not be limited to, the following:
 - 1) Installation of solar power systems or other renewable electric generating systems that provide electricity to power on-site equipment and possibly provide excess electric power;
 - 2) Construct onsite or fund off-site carbon sequestration projects (such as a forestry or wetlands projects for which inventory and reporting protocols have been adopted). If the project develops an off-site project, it must be registered with the Climate Action Reserve or otherwise be approved by the BAAQMD in order to be used to offset Project emissions;
 - 3) Purchase of carbon credits to offset project annual emissions. Carbon offset credits must be verified and registered with The Climate Registry, the Climate Action Reserve, or another source approved by the California Air Resources Board or BAAQMD. The preference for offset carbon credit purchases include those that can be achieved as follows: 1) within the City; 2) within the San Francisco Bay Area Air Basin; 3) within the State of California; then 4) elsewhere in the United States. Provisions of evidence of payments, and funding of an escrow-type account or endowment fund would be overseen by the City;
 - 4) Develop and implement a transportation demand management (TDM) program to reduce mobile GHG emissions.
- iv. The GHG reduction plan for each hotel shall be submitted to the City of San José Supervising Environmental Planner, for approval prior issuance of any Public Works Clearances for each hotel.
- c. Hazards and Hazardous Materials:
 - i. MM HAZ-1.1: The project applicants shall retain a qualified consultant to conduct soil sampling to test shallow soils on the site for organochlorine pesticides and pesticide-based metals (e.g. lead and arsenic). The qualified consultant shall prepare documentation to outline the soil sample data and testing. If the residual contaminants are not detected and/or are found to be below the environmental screening levels (ESLs) for public health and the environment in accordance with Santa Clara County Department of Environmental Health (SCCDEH) or the California Department of Toxic Substances Control (DTSC) requirements, no further mitigation is required.

If residual contaminants are found and are above ESLs, the project applicants shall implement appropriate management procedures, such as removal of the contaminated soil and/or capping the contaminated soil under clean soil or hardscape must be implemented under regulatory oversight from the SCCDEH or DTSC. Copies of all environmental investigations shall be submitted to the City's Environmental Services Department and the Supervising Environmental Planner prior to issuance of any grading permits.
- d. Hydrology and Water Quality

- i. MM HYD - 1: Prior to the issuance of any grading permits, the project applicant shall ensure the on-site well at 469 Piercy Road has been properly abandoned with oversight from the Santa Clara Valley Water District (SCVWD). A well destruction permit shall be obtained from the SCVWD and the well decommissioned in accordance with the conditions of the permit. A copy of the issued destruction permit shall be provided to the Public Works Engineer and the City's Environmental Supervising Planner along with SCVWD verification of implementation of, and compliance with, the well destruction permit.
 - e. Noise and Vibration
 - i. MM NOI-1: Consistent with the General Plan FEIR and City of San José Municipal Code, the project proposes to implement the following measures to ensure that project operational noise does not exceed 55 dBA DNL at residential property lines:
 - 1) A detailed acoustical study shall be prepared during final building design to evaluate the potential noise generated by building mechanical equipment and to identify the necessary noise controls that are included in the design to meet the City's 55 dBA DNL noise limit at the shared property line. The study shall evaluate the noise from the equipment and predict noise levels at noise-sensitive locations. Noise control features, such as sound attenuators, baffles, and barriers, shall be identified and evaluated to demonstrate that mechanical equipment noise would not exceed 55 dBA DNL at noise-sensitive locations, such as residences. The study shall be submitted to the City of San José for review and approval prior to issuance of any building permits.
 - 2) Ensure that noise generating activities such as maintenance activities and loading and unloading activities are limited to the hours of 7:00 AM to 9:00 PM.
- 32. Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. *Construction Plans.* This permit file number, H18-029 shall be printed on all construction plans submitted to the Building Division.
 - b. *Americans with Disabilities Act.* The Permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
 - c. *Emergency Address Card.* The project Permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - d. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance begins with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
 - e. *Common Interest Development.* Prior to issuance of any certificate of occupancy, or release for occupancy, the Permittee shall provide a self-certified statement to the satisfaction of the City's Chief Building Official that the project, as constructed, meets the City of San José Common Interest Development standards.

- f. *Project Addressing Plan.* Prior to issuance of a Building Permit, the following requirements shall be met to the satisfaction of the Chief Building Official: The project Permittee shall submit an addressing plan for approval for the subject development (residential, mixed use, complex commercial or industrial). The addressing plan should include proposed street names for the streets (as referenced on an approved tentative map) and the type of addressing (i.e., individual street addresses as compared to unit number off of a primary street).
 - g. *Other.* Such other requirements as may be specified by the Chief Building Official.
33. **Revocation, Suspension, Modification.** This Site Development Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 1, Section 20.100.350, Title 20 of the San José Municipal Code it finds:
- a. A violation of any conditions of the Site Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

APPROVED and issued on this **11th day of December, 2019.**

Rosalynn Hughey, Director
Planning, Building, and Code Enforcement

Deputy